

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RICARDO GIL-CABRERA,

Plaintiff,

-v-

No. 20-CV-9493-LTS-SDA

CITY OF NEW YORK, et al.,

Defendants.

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ORDER ADOPTING REPORT & RECOMMENDATION

The Court has reviewed Magistrate Judge Stewart D. Aaron's September 27, 2021, Report and Recommendation (the "Report") (docket entry no. 34), which recommends that the Court grant Defendants' partial motion to dismiss and grant Plaintiff leave to amend as to certain of the claims subject to dismissal. No objections to the Report have been received.

In reviewing a report and recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C.A. § 636(b)(1)(C) (Westlaw through P.L. 117-57). "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." United States Sec. & Exch. Comm'n v. Collector's Coffee Inc., 451 F. Supp. 3d 294, 296 (S.D.N.Y. 2020) (citation omitted).

The Court has reviewed carefully Magistrate Judge Aaron's thorough and well-reasoned Report and Recommendation and finds no clear error. The Court therefore adopts the Report in its entirety for the reasons stated therein.

Accordingly, for the reasons stated in the Report, the Court dismisses (1) Plaintiff's claims to the extent they allege violations of the Equal Protection Clause, (2)

Plaintiff's claims against individual defendants Cynthia Brann, Margaret Egan, and Patsy Yang (the "Individual Defendants"), in their personal and official capacities, and (3) Plaintiff's claims to the extent they seek recovery of punitive damages against defendant the City of New York.<sup>1</sup>

Plaintiff is granted leave to amend, to the extent he seeks to cure the deficiencies identified in the Report, as to his claims against the Individual Defendants in their personal capacities, and as to his claim against defendant Yang in her official capacity. If Plaintiff seeks to so amend, he must file a Third Amended Complaint by **January 14, 2022**. Plaintiff is warned that the Third Amended Complaint will completely replace, not supplement, any prior complaint, and it must therefore include all relevant factual allegations (including those previously asserted in the Second Amended Complaint) against each remaining defendant.

The case remains referred to Magistrate Judge Aaron for general pretrial management.

This Order resolves docket entry no. 25. The Clerk of Court is respectfully directed to terminate defendants Cynthia Brann, Margaret Egan, and Patsy Yang on the docket of this action, and to mail a copy of this Order to Plaintiff.

SO ORDERED.

Dated: New York, New York  
December 14, 2021

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
Chief United States District Judge

**Copy to be mailed to:**  
Ricardo Gil-Cabrera  
DIN: 21R0667  
NYSDOC Ulster Correctional Facility  
750 Berme Road  
Napanoch, New York 12458

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<sup>1</sup> The Court does not reach Defendants' request (docket entry no. 26 at 8-10) that the Court dismiss Plaintiff's passing request for release from custody. Defendants may re-raise that request in their anticipated motion for summary judgment. (See docket entry no. 39.)